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But legislators usually are very cautious. Out of abundant caution this is done and my hon. Friend will also find that even though the General Clauses Act may provide for such things, even in Parliamentary legislation, they do take care to provide for abetment as well in the clauses of the Bill. My hon. Friend may be correct in his interpretation but there is no harm in being cautious and I do not see there is any harm."

DR. V. K. JOHN :—" There is no harm but only there is no necessity."

Clauses 4, 5 and 1 were put one by one and carried.

The preamble was put and carried.

THE HON. DR. P. SUBBARAYAN :—" Sir, I now move—

'*that the Bill be passed into law.*'

" I quite realize the difficulties which you have raised and which other hon. Members have pointed out. Mr. Suryanarayana Rao as an ardent social reformer seems to have been very keen that I should take this measure back to the lower House and bring it back again with the amendment that you have suggested. In spite of being a social reformer, I belong to the cautious variety and therefore, I do not want to do anything which might detract from what I said in connexion with the point you raised. This Bill will of course become law and when it is applied and when there are decisions of the court and we find that it is not working in the manner that hon. Members desire, that will be time to think of amendments. To make it as wide as hon. Members want, I am afraid, will be taking a rather dangerous path which might lead us into positions which the Legislature and the members did not really think or conceive of now.

" There is one more point that I have to answer. You should not punish any person under 16 because they have no right of discretion and might be misled by others and they will be punished. To punish people under 16 will be against all ideas of jurisprudence which my hon. Friend Dr. John understands as well as I."

The motion was carried and the Bill was passed into law.

(5) THE MADRAS MARUMAKKATTAYAM (AMENDMENT) BILL, 1947 (L.A. BILL NO. 39 OF 1947).

* THE HON. SRI K. MADHAVA MENON :—" Mr. President, I move—

'*that the Madras Marumakkattayam (Amendment) Bill*[a]*, 1947 (L.A. Bill No. 39 of 1947) as passed by the Legislative Assembly be taken into consideration at once.*'

" Many hon. Members of this House may not exactly know what this is for; but this is a matter which vitally affects the people of Malabar who follow the Marumakkattayam law. Hon. Members may be aware that the custom among the people then prevailing

[a] Printed as Appendix V on page 129 infra.

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was codified in the Madras Marumakkattayam Act, 1932 (Act XXII of 1933) and section 4 of the Act says :

'*The conjugal union of a marumakattayi female with—*

(i) a male belonging to the same community as such female, or

(ii) a male, not belonging to such community and whether a marumakkattayi or not,

shall be deemed for all purposes to be a legal marriage if—

the parties are not related to each other in such degree of consanguinity or affinity that conjugal union between them is prohibited—

and the union is so solemnized in accordance with such ceremonies on or after the date on which this Act comes into force . . . or was registered as a marriage under the Malabar Marriage Act, 1896, before the date on which this Act comes into force and is subsisting on such date.'

" The words 'subsisting on such date' was interpreted by the High Court in 1946 to mean that if on the date of the passing of the Act either the husband or the wife had died that marriage was not subsisting on that date. There being no valid marriage on that date, the children of each of the marriage in which one of the parties had died did not inherit any property. Not only that, they said that the children could not be considered to be even legitimate children so that many of us have been practically bastardized, though it must never have been the intention of the sponsors of the Bill; Sir M. Krishnan Nayar would never have meant such a thing. It was a mistake and if I may say so, the position is really inconsistent with section 50 of the Act which says that 'nothing contained in this Act shall be deemed to confer any rights on the parties to or the issue of any marriage which is dissolved before this Act comes into force or be deemed to affect any rule of Marumakkattayam law, custom or usage except to the extent expressly laid down in this Act', so that that interpretation was not at all warranted by the tenor of the legislation. After this decision, there was considerable agitation in Malabar and it has been brought to the notice of Government that there is widespread feeling that the decision runs counter to the opinion held by the persons following the Marumakkattayam law. It has, therefore, been suggested that the Act should be suitably amended except as regards decrees and sales in court auction which had become final and transfers and partitions before the amending Act comes into force. The Collector of Malabar has reported that the effect of the decision runs counter to Malabar opinion and sentiment and the Collector of South Kanara has reported that the decision has caused a stir among the followers of the Marumakkattayam law and that there is a widespread feeling that the Act should be amended. Both of them recommend an amendment of the Act on the lines indicated in the Bill; the Board of Revenue

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and the High Court have agreed with the principles underlying the Bill and there is no objection to the amendment. I have taken care to see that the amendment should not affect contracts or partitions or transactions which have become final; clause 6 of the Bill provides to this effect. The object is that there should not be much unsettlement and the amendment rectified a mistake that has been done by the judgment of the High Court."

SRI B. BHIMA RAO :—" Mr. President, I am glad that this Bill has been brought before this House at least within two years after the Madras High Court passed their judgment. I believe it is Justice Horwill who gave this decision pointing out the lacuna in this Act. I am surprised that it should have taken two years for the Ministry to bring forward this Bill. But better late than never and I really congratulate the Government on this piece of legislation because several people are affected by the judgment and there is the case of the children who have so to say to be legitimized by this enactment. In certain cases, the Ministry recognize the need for giving retrospective effect to legislation and this is eminently a case like that. It makes me wonder why Dr. Subbarayan did not bring forward this Bill but Mr. Madhava Menon brought this forward."

THE HON. DR. P. SUBBARAYAN :—" For the simple reason that I do not profess to know the Marumakkattayam law as well as my hon. Friend Mr. Bhima Rao does. I think my Hon. Colleague would do better in a job like that than I."

SRI B. BHIMA RAO :—" I have to deal with some cases under the Marumakkattayam Act XXII of 1933 in certain succession cases and that is why I have gone through the Act and I know some of the provisions of the Act."

SRI M. NARAYANA MENON :—" Sir, this is a welcome legislation inasmuch as it is an absolute necessity for the people following Marumakkattayam law. The Act of 1932 was intended to remove certain difficulties in the system of inheritance among the Marumakkattayam people. But the Act was unfortunately interpreted by the High Court against the intention with which it was enacted and against the social consciousness of the people. It has become therefore absolutely necessary to amend the Act in order to make the intention of the Legislature clear. So we congratulate the mover of this Bill in bringing forward this measure. Previous to the 1932 Act, even for about fifty years the Marumakkattayam people were swinging in favour of Marumakkattayam, i.e., inheritance by children rather than by sister's children. It was on the basis of this social feeling that the measure was introduced and passed but the High Court gave another interpretation which was reactionary. Though the wording of section 50 of the Act is clear as to the intention of the Legislature, the High Court held that in a marriage between two persons governed by that Act if one of them had died before the commencement of the Act the marriage would not be a legal marriage and the children of the marriage would not consequently be entitled to the rights of

succession, etc., conferred on them by the Act. So this Bill is absolutely necessary. One thing more the Hon. Minister has done; and that is for certain things which have been done in pursuance of that decision of the High Court are not to be unsettled by giving this amending Bill a retrospective effect. Those things are dealt with in clause 6 of the Bill, which says 'Any decree or order of a competent Court which became final before the commencement of this Act, any sale which was held in execution of a decree or an order of a competent Court and which became final before the commencement of this Act and any transfer or partition of property effected before the commencement of this Act are saved and unaffected by this Act. I welcome this measure and all Marumakkattayam people also welcome it.''

The motion was put and carried.

Clauses 2 to 6 were put one by one and carried.

Clause 1 and the Preamble were put and carried.

THE HON. DR. P. SUBBARAYAN :—" Sir, I move, as I am in duty bound as Law Member of this Government, though it is purely conventional, the Legislative Council thinks (though the Bill has been moved by the Hon. Mr. K. Madhava Menon) I should move that the Bill be passed into law. So I do it as a formal duty. I move that the Madras Marumakkattayam (Amendment) Bill, 1947 (L.A. Bill No. 39 of 1947) as passed by the Legislative Assembly be passed into law."

The motion was put and carried.

(6) THE MADRAS CITY POLICE (AMENDMENT) BILL, 1947 (L.A. BILL NO. 40 OF 1947).

THE HON. DR. P. SUBBARAYAN :—" Sir, I move—

' *that the Madras City Police (Amendment) Bill*,[a] 1947 (L.A. *Bill No.* 40 *of* 1947) *as passed by the Legislative Assembly be taken into consideration at once.*'

" Sir, this is a very simple measure that has been brought forward; because the Corporation of Madras by a resolution brought to the notice of Government that heavy loads are being drawn by human beings and this sort of practice should be put an end to. Government felt as this practice has been long in vogue they should only restrict the load and not entirely prevent the practice. So we have brought forward this measure and it provides a certain amount of weight that could be dragged; children under a certain age are not to be allowed to drag the load but only adults should be allowed to do so. The point raised by Dr. V. K. John that women should be prevented altogether from dragging loads is a correct one, but Government wish now to see how this amendment works out in practice. Sir, I move the Bill be taken into consideration at once."

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[a] Printed as Appendix VI on page 130 infra.